586 *Active Divorce*: This is simply known as *tag*: disputes over divorce which are frequently brought before the Courts being known as *guay tag*.

(*a*) If *A* marries *B* with ten head of cattle (or less) and a divorce is instituted, all cattle should be returned to *A* with the exception of one cow (in the past two) known [684] as *kwor kwob*. The expression *kwor kwob* is used generally in reference to all kinds of sexual offences in which rights in women are violated and, as will be seen later, implies that compensation should be paid. Since the union is terminated and *A* has renounced his rights in his wife, the Shilluk say he must pay something for taking her virginity. It also refers to loss of domestic assistance in the home, for Shilluk sometimes say that this deduction is *kiec mac*, which comes to mean 'compensation for services rendered in the home' and it is not considered necessary if the union is dissolved before the wife takes up residence with her husband. This deduction is still made even if the wife is to blame.

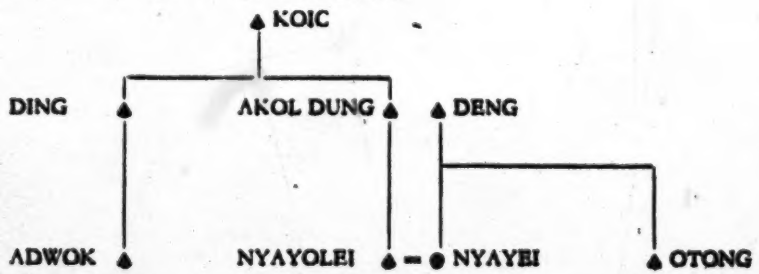
(*b*) *A* marries *B* and *B* produces children. Should a divorce follow, *A* can only claim return of his cattle after suitable deductions have been made for the children at the rate of five head of cattle for a girl and two for a boy. In such circumstances *kwor* [613] *kwob* or *kiec mac* would not be paid by the husband, who thus retains legal parenthood [848] of his children. Otherwise, as will be seen later, the children would become *okeijo* (illegitimate) and belong to the wife's lineage.

586 Two examples show the way in which such disputes are nowadays dealt with by ● 69 the Courts.

Kak *wad* Banykwec *v.* Anyang *wad* Dwalo (1949)

[583] Kak married Anyang's daughter Nyabony for ten head of cattle, ten sheep and £Ea.500m/ms. in cash. One child was born of the union and, at the time of dispute, was about three years old. Nyabony then eloped with another man and Kak claimed the return of his cattle and other bridewealth. Anyang had already paid everything back with the exception of two cattle which he claimed should stand as legitimization fees for the child. The Court, however, held that the legitimization fees were covered by the offspring of the original cattle which Anyang had not returned to Kak and which Kak was not in fact claiming. No deductions were deemed necessary as *kiec mac* was claimable by Nyabony's family in any case.

Adwok *wad* Deng *v.* Otong *wad* Deng (1949)



[583] Nyayolei (deceased) married Nyayei for eight head of cattle, sixteen sheep and goats, eleven baskets of grain and .500m/ms. in cash. The marriage took place in *reth* Fadiet's time

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23

(*circa* 1915) Nyayei bore no children and ran away with another man. All the cattle have been returned since then, but not the sheep and the goats nor the grain. Adwok then claimed one bull in place of the grain. The Court in the final instance decided against Adwok on the grounds that no cattle as *kwor kwob* (*kirc mac*) had been retained by Otong and the sheep, goats, grain and cash must be held to represent them.

Dissolution of Marriage owing to the Death of the Wife

This is known as *tag jook*.[1] Pumphrey says:

Where a marriage is terminated by the death of the wife, her *gol* must either present to the husband an unmarried sister known as *kai ot*, or they must return the cattle (or their equivalent in similar animals), making deductions for the children born of the marriage and living at the time of their mother's death.[2]

This statement requires qualification:

(*a*) If the wife dies soon after marriage and without issue, all cattle should be returned to the husband or, in some cases, another girl from her family might be given to replace her. The Shilluk refer to this as *kai ot*, which, as Pumphrey states, means literally 'substitute of the house'.

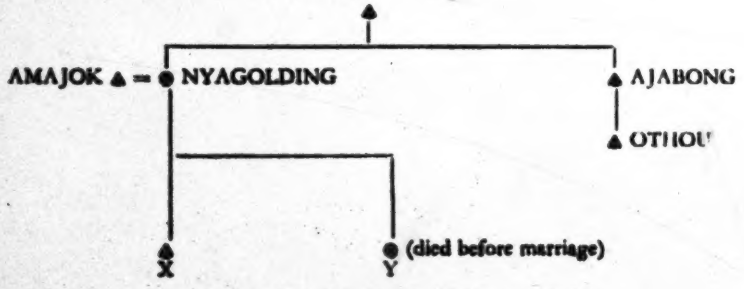
(*b*) If the wife dies a long time after marriage and after giving birth to children, thereby fulfilling her procreative obligations to her husband, *kai ot* may still be claimed, but is recognized as being only two head of cattle. *Kai ot* in this sense is intended to assist the husband to marry again, but it is often claimed, not by the husband, but by the wife's male children many years after her death. In fact, it frequently happens that a man claims *kai ot* on the death of his mother or of his father's wives. It is also a subject of frequent litigation in the Courts.

(*c*) If the wife dies in childbirth, the child dies too, and she leaves no other children, then all cattle should be returned with the exception of two known as *dhok wic dan* or *dhok remo*. *Dhok wic dan* means literally 'cattle in the place of children' while *dhok remo* means 'cattle of blood'.

It should be noted that the deduction known as *kwor kwob* would not be claimed in addition to *dhok remo*, and only applies if no children are born to the wife.

The following disputes settled before the Court provide examples:

Amajok *wad* Deng *v.* Othou *wad* Ajabong



[1] *Jook* means God: hence dissolution by act of God.
[2] Pumphrey, op. cit., p. 32.

8:Howell E-4,5 (1937, 1948) 1953 . FJ23 Shilluk FJ23

69 586 Amajok married Nyagolding for ten head of cattle and ten sheep. Nyagolding gave birth to two children who died as adults, while she herself died some twenty-eight years ago. No cattle were returned to Amajok on her death and no claim was made so long as *X* and *Y* were living. Amajok now claims *kai ot* from Othou. This claim was upheld by the Court and two head of cattle awarded to Amajok. It is, as a matter of fact, unlikely that Amajok would have claimed *kai ot* if his daughter *Y* had lived and married, though *X* might have done so.

Anger *wad* Nyang *v.* Kanker *wad* Ming

[583] Anger married Kanker's sister, Aciethgwok, for eight head of cattle and five sheep. This was in *reth* Fadiet's time (*circa* 1909). Aciethgwok died in childbirth leaving no other children. Kanker returned six cattle and all the sheep. Anger (in 1949) then claimed the return of the remaining cattle. This claim, made some forty years after the event, was regarded by the Court as a frivolous one. It was held that the two head of cattle stood as *dhok remo*, to which Kanker had undisputable right.

586 587 [613] *Kai ot* therefore has various meanings, the most precise being another daughter of the dead wife's house handed over by her family as a 'substitute'. The custom is not confined to the husband as an individual, but applies to his kinship group, for Shilluk say that a girl might be handed over as *kai ot* even in a later generation, if no bride-wealth had been returned in the interim. Again, if the wife died after fulfilling her procreative obligations, her family might allow the widower to marry her sister at a reduced bridewealth (eight head of cattle instead of ten). This, however, is really only an application of the general rule that *kai ot* (here meaning a payment of cattle) can be claimed by a man from his maternal uncle when his mother dies, provided she dies [571] at a ripe old age and has borne several children. In this sense *kai ot* does not depend on the termination of the union, but is rather confirmation thereof and is not paid unless the two lineages wish to maintain the close relationship which marriage in a previous generation has secured. This claim is now nearly always upheld in the Courts [178] and provides an example of how a payment depending on a variety of circumstances has become enforceable at law.

Further Rules Concerning Cattle Returnable on Divorce

586 Shilluk sometimes say that in the old days on divorce all the original bridewealth cattle and all their offspring were returned. There is little evidence for this statement and the rule is certainly not applied today. The wife's kinsmen are not expected to return any cattle which have died in their possession, though they may be expected to produce the hides as evidence of death. On the other hand, cattle which have been sold for cash, slaughtered for meat, or paid in execution of debts (other than direct marriage) or as compensation for wrongs committed, must be replaced by substitutes.

Writing on this subject in 1935, Pumphrey says:

583 586 Cattle paid as marriage payments in Shilluk country are an exact substitute for cash in that they are treated as negotiable instruments. A claim for the identical cows when, owing to divorce or death, the marriage payment is reclaimed, is never supported. Cattle paid are in fact usually negotiated immediately, just as cash. The recipient will almost invariably pay the cattle away either in satisfaction of his debts or else in the marriage of one of his near male relatives.[1]

[1] Pumphrey: from unpublished records.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23

same woman and to do so would result in spiritual calamity and actual sickness (*dwale*) for which ritual expiation would be necessary, even though an indemnity would not be claimed. This spiritual bar does not apply to half-brothers though again no compensation would be expected. Immunity from the payment of compensation for adultery extends also to paternal cousins and agnatic kinsmen farther removed in the kinship structure. The extent is variable—a link four to five generations back may still give immunity—but it appears that common residence in one hamlet or one settlement is a factor of importance. Shilluk say that this theoretical relaxation of the law of adultery is less commonly accepted than in the past and that compensation is more frequently demanded. This may be due to the fact that legal machinery is now available for the settlement of such claims, though presumably public opinion in the matter is expressed in the judgements of the Courts. Moreover, the network of obligations to assist relatives in the payment of compensation of this sort was cast wider in the past. Hence, theoretically at any rate, those who would receive compensation might well be those upon whom lies the obligation to assist in its payment. The two obligations thus cancel each other out.

The following court case illustrates the procedure.

Ajak *wad* Fadiet *v.* Awow *wad* Awingjok (*kwor kwob nian ajur*)

Awow seduced Landeng, daughter of Akiec *wad* Nyaljok. Landeng was at the time betrothed to Ajak, who had paid nine head of cattle and thirty-six sheep. She had not, however, taken up residence with Ajak at the time of the offence and, since no child resulted, only one bull is claimable. The Court awarded Ajak one bull which will be handed over to Landeng's brother, since Ajak himself has no legal claim to it.

Akoc *wad* Agiu *v.* Taytung *wad* Deng (*kwor yac nian ajur*)

Taytung impregnated Nyandongkal (daughter of Bilnyang, brother of Agiu) and she produced a girl-child. She was subsequently married to Ajing Amikwel for a full bridewealth of ten head of cattle. The baby, however, remains with her maternal uncle and is *okejo*. Her maternal uncle has full rights in the child and will receive the bridewealth on her marriage. Neither her mother's husband nor her physical father have any rights in her at all. This case was brought before the Court merely because Taytung had not completed the compensation payment which he was ordered to do. (He had, in fact, only paid two out of the three.)

Onak *wad* Maydong *v.* Dogeng *wad* Ajwin (*kwor yac cie dhano*)

Dogeng seduced Onak's sister Agwer. She was at the time betrothed to one Bul Ayuil, but was living at home. A boy was born to Agwer after she had taken up residence with Bul, by then her legal husband. For this reason, the child (though actually dead) is considered to belong to Bul, though the compensation is claimed by Onak. The case was brought to the Court simply because Dogeng had paid no compensation which he had previously been ordered to pay by instalments. No dispute over legal paternity of the child or over the compensation cattle had arisen. Had the child lived (especially if it had been a girl-child) Onak might have claimed legal rights in it, though the ruling here, as we have seen, is that providing the child was actually born after the woman had taken up residence with her husband it should belong to him. In fact, the child was born a considerable time after Agwer had taken up residence with Bul. Otherwise the case might have been classed as *kwor yac nian ajur* and assessed at only three head of cattle.